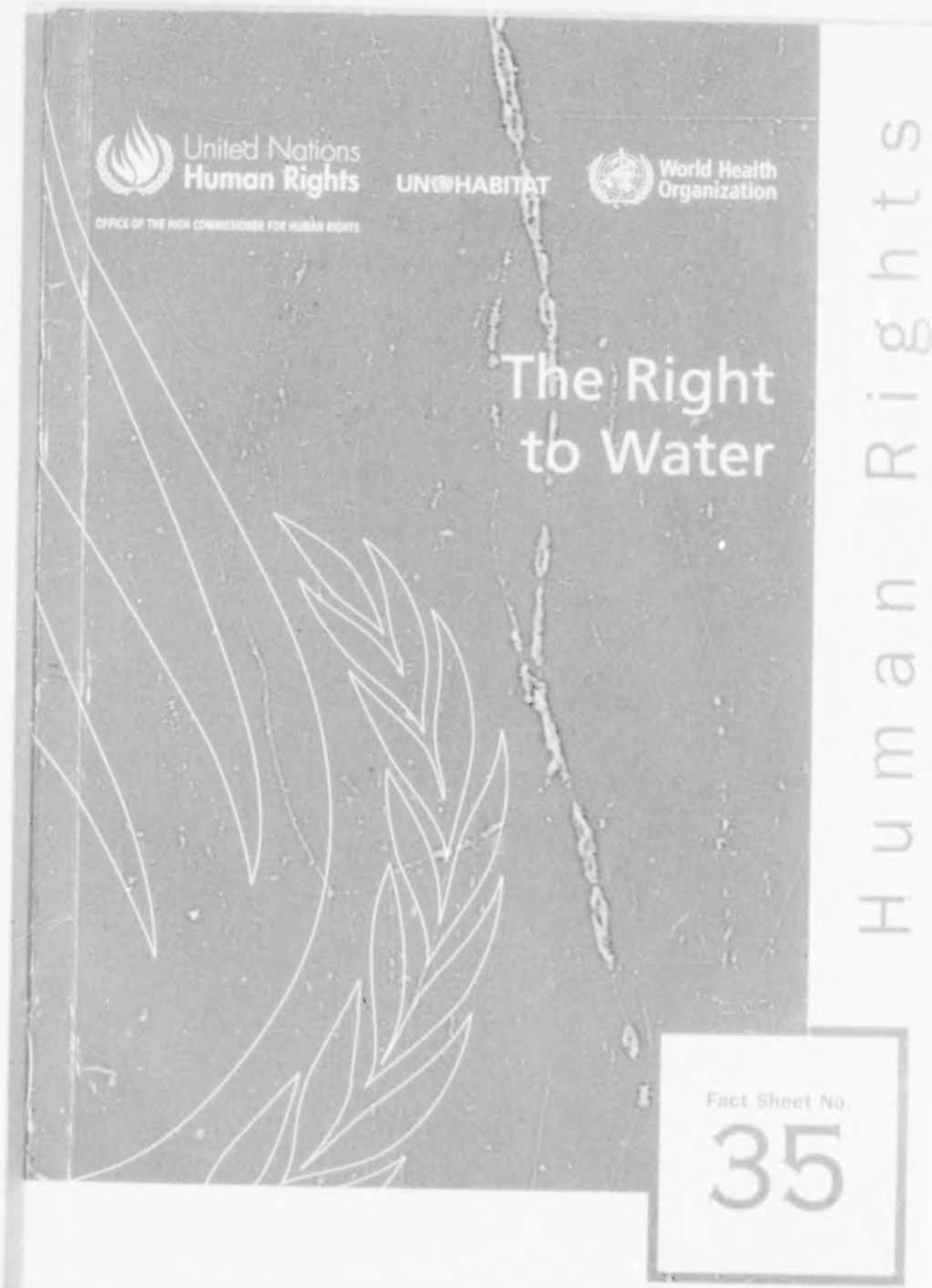
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The Right to Water
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UN-HABITAT

The Right to Water

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NOTE

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ABBREVIATIONS

CESR	Center for Economic and Social Rights
COHRE	Centre on Housing Rights and Evictions
IDPs	internally displaced persons
ILO	International Labour Organization
MDGs	Millennium Development Goals
NGO	non-governmental organization
NHRI	national human rights institution
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNDP	United Nations Development Programme
UN-Habitat	United Nations Human Settlement Programme
UNICEF	United Nations Children's Fund
WHO	World Health Organization

INTRODUCTION

Water is the essence of life. Safe drinking water and sanitation are indispensable to sustain life and health, and fundamental to the dignity of all. Yet, 884 million people do not have access to improved sources of drinking water, while 2.5 billion lack access to improved sanitation facilities.[1] While these numbers shed light on a worrying situation, the reality is much worse, as millions of poor people living in informal settlements are simply missing from national statistics. The roots of the current water and sanitation crisis can be traced to poverty, inequality and unequal power relationships, and it is exacerbated by social and environmental challenges: accelerating urbanization, climate change, and increasing pollution and depletion of water resources.[2]

In order to address this crisis, the international community has increasingly recognized that access to safe drinking water and sanitation must be considered within a human rights framework. Such access is explicitly referred to, for instance, in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. In 2002, the United Nations Committee on Economic, Social and Cultural Rights adopted its general comment No. 15 on the right to water, defined as the right of everyone "to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." Four years later, the United Nations Sub-Commission on the Promotion and Protection of Human Rights adopted guidelines for the realization of the right to drinking water and sanitation. The United Nations Development Programme (UNDP), too, has underlined that the starting point and the unifying principle for public action in water and sanitation is the recognition that water is a basic human right. In 2008, the Human Rights Council created the mandate of the "independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation" to help clarify the scope and content of these obligations.

Several national constitutions protect the right to water or outline the general responsibility of the State to ensure access to safe drinking water and sanitation for all. Courts from various legal systems have also adjudicated cases related to the enjoyment of the right to water, covering issues such as the pollution of water resources, arbitrary and illegal disconnections, or lack of access to sanitation.

This publication is based on *The Right to Water*, issued by the World Health Organization (WHO), the Office of the United Nations High Commissioner

for Human Rights (OHCHR), the Centre on Housing Rights and Evictions (COHRE), WaterAid, and the Center for Economic and Social Rights (CESR) in 2003. It starts by explaining what the right to water is, illustrates what it means for specific individuals and groups, and then elaborates upon State obligations with respect to the right. It concludes with an overview of national, regional and international accountability and monitoring mechanisms.

As chapter I will show, water and sanitation do not enjoy the same status under international law. Yet, in many instances and international declarations and commitments, including the Millennium Development Goals, sanitation has been closely associated with the right to water. That is why, in some parts of this publication, the two are mentioned together.

I. WHAT IS THE RIGHT TO WATER?

A. The right to water in international human rights law

While water has not been explicitly recognized as a self-standing human right in international treaties, international human rights law entails specific obligations related to access to safe drinking water. These obligations require States to ensure everyone's access to a sufficient amount of safe drinking water for personal and domestic uses, defined as water for drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. These obligations also require States to progressively ensure access to adequate sanitation, as a fundamental element for human dignity and privacy, but also to protect the quality of drinking-water supplies and resources.

Status of sanitation under international human rights law

About 2.5 billion people still do not have access to safe sanitation. This has a profound negative impact on numerous human rights. For instance, without sanitation facilities, one does not enjoy the right to adequate housing. The health impact of the lack of sanitation is well documented. It accounts for as many as a quarter of all under-five deaths and is a serious threat to the right to health. Poor sanitation also has a severe effect on water quality and jeopardizes the enjoyment of this right, too.

While sanitation is not yet recognized as a self-standing right, an increasing number of international, regional and national declarations and national legislations seem to be moving in this direction. The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation has expressed her support for the recognition of sanitation as a distinct right (see A/HRC/12/24).

The concept of basic water requirements to meet fundamental human needs was first established at the 1977 United Nations Water Conference in Mar del Plata, Argentina. Its Action Plan asserted that all peoples, whatever their stage of development and their social and economic conditions, had the right to have access to drinking water in quantities and of a quality equal to their basic needs. Agenda 21, adopted at the United Nations Conference on Environment and Development in 1992, confirmed this. Subsequently, a number of other plans of action have referred to safe drinking water and sanitation as a human right. In the Programme of Action of the 1994 International Conference on Population and Development, States affirmed that all people have the

right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation. The Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II) in 1996, also recognized water and sanitation as part of the right to an adequate standard of living.

Regional declarations have also recognized the right to water. The Council of Europe has asserted that everyone has the right to a sufficient quantity of water for his or her basic needs.[3] In 2007, Asia-Pacific leaders agreed to recognize people's right to safe drinking water and basic sanitation as a basic human right and fundamental aspect of human security.[4] In the Abuja Declaration, adopted at the first Africa-South America Summit in 2006, Heads of State and Government declared that they would promote the right of their citizens to have access to clean and safe water and sanitation within their respective jurisdictions. While these declarations are not legally binding, they do reflect a consensus and a political statement of intent on the importance of recognizing and realizing the right to water.

In November 2002, the Committee on Economic, Social and Cultural Rights adopted its general comment No. 15 on the right to water, defined as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.[5] While the International Covenant on Economic, Social and Cultural Rights does not explicitly refer to the right to water, the Committee underlined that the right to water was part of the right to an adequate standard of living, as were the rights to adequate food, housing and clothing. The Committee also stressed that the right to water was inextricably linked to the rights to health, adequate housing and food.

> Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for, the realization of the right to an adequate standard of living "including adequate food, clothing and housing". The use of the word "including" indicates that this catalogue of rights was not intended to be exhaustive. The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.
>
> *Source*: General comment No. 15 (2002) on the right to water, para. 3.

In 2006, the Sub-Commission on the Promotion and Protection of Human Rights adopted guidelines for the realization of the right to drinking water

and sanitation. These guidelines use the definition of the right to water provided by the Committee and define the right to sanitation as the right of everyone to have access to adequate and safe sanitation that is conducive to the protection of public health and the environment.[6]

In 2007, OHCHR conducted a study, at the request of the Human Rights Council, on the scope and content of human rights obligations related to access to safe drinking water and sanitation (A/HRC/6/3). In it, the High Commissioner for Human Rights concluded that the time had come to recognize access to safe drinking water and sanitation as a human right.

Specific obligations in relation to access to safe drinking water and sanitation have also increasingly been recognized in core human rights treaties, mainly as part of the right to an adequate standard of living and the right to health.

International human rights treaties entailing specific obligations related to access to safe drinking water and sanitation

- The Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979 (art. 14 (2))
- International Labour Organization (ILO) Convention No. 161 concerning Occupational Health Services, adopted in 1985 (art. 5)
- The Convention on the Rights of the Child, adopted in 1989 (arts. 24 and 27 (3))
- The Convention on the Rights of Persons with Disabilities, adopted in 2006 (art. 28)

Obligations related to access to safe drinking water and sanitation are also implicit in a number of other international human rights treaties and are derived from obligations pertaining to the promotion and protection of other human rights, including the rights to life, adequate housing, education, food, health, work and cultural life. In interpreting the right to life under the International Covenant on Civil and Political Rights, the Human Rights Committee, in its general comment No. 6 (1982), stressed that besides protecting against the active taking of life, the right also placed a duty on States to ensure access to the means of survival and required States to adopt positive measures, notably to reduce infant mortality, increase life expectancy and eliminate malnutrition and epidemics. In its general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural

Rights underlined that the drafting history of the International Covenant on Economic, Social and Cultural Rights and the wording of its article 12 (2) acknowledged that the right to health extended to the underlying determinants of health, including access to safe drinking water and sanitation.

At the regional level, both the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) contain explicit human rights obligations related to access to safe drinking water and sanitation. The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) underlines that everyone shall have the right to live in a healthy environment and to have access to basic public services (art. 11.1). The Arab Charter on Human Rights (2004) similarly recognizes the right of everyone to the enjoyment of the highest attainable standard of health, for which States should ensure the provision of basic nutrition and safe drinking water for all and proper sanitation systems (art. 39).

Although the Revised European Social Charter (1996), the American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981) do not explicitly refer to human rights obligations to provide access to safe drinking water and sanitation, related jurisprudence has derived protection of such access from the enjoyment of other human rights, such as the rights to adequate housing, health or life.

Human rights obligations to provide access to safe drinking water and sanitation under the Revised European Social Charter

The European Committee of Social Rights found that the right to adequate housing, provided for in article 31 of the Revised European Social Charter, included specific obligations related to access to safe drinking water and sanitation:

Article 31 (1) guarantees access to adequate housing, which means a dwelling which is structurally secure; safe from a sanitary and health point, i.e., it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity; not overcrowded and with secure tenure supported by law.

Source: Complaint No. 27/2004, *European Roma Rights Centre* v. *Italy*, Decision on the Merits, 7 December 2005.

Several international guidelines and principles encompass provisions related to access to safe drinking water and sanitation. While not legally

binding, these provide useful guidance regarding specific obligations to provide such access, notably for particular groups such as prisoners, workers, refugees and internally displaced persons (IDPs), older persons, as well as indigenous peoples.[7]

International humanitarian and environmental law also specifically protects access to safe drinking water and sanitation. The Geneva Conventions (1949) and their Additional Protocols (1977) outline the fundamental importance of access to safe drinking water and sanitation for health and survival in international and non-international armed conflicts. The Protocol on Water and Health to the United Nations Economic Commission for Europe's 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes provides that States parties must take appropriate measures to provide access to drinking water and sanitation and to protect water resources used as sources of drinking water from pollution. The African Convention on the Conservation of Nature and Natural Resources (2003) also provides that its contracting States shall endeavour to guarantee for their populations a sufficient and continuous supply of suitable water.

Finally, many constitutions contain explicit references to the right to water, including those of Bolivia (Plurinational State of), the Democratic Republic of the Congo, Ecuador, South Africa, Uganda and Uruguay. The right to sanitation has also been recognized in constitutions and national legislations, including in Algeria, Bolivia (Plurinational State of), Maldives, South Africa, Sri Lanka and Uruguay. Other constitutions suggest a general responsibility on the part of the State to ensure access to safe drinking water and sanitation.[8]

B. Key aspects of the right to water

- **The right to water contains freedoms.** These *freedoms* include protection against arbitrary and illegal disconnections; prohibition of unlawful pollution of water resources; non-discrimination in access to safe drinking water and sanitation, notably on the basis of land or housing status; non-interference with access to existing water supplies, especially to traditional water sources; and ensuring that personal security is not threatened when accessing water or sanitation outside the home.

- **The right to water contains entitlements.** These *entitlements* include access to a minimum amount of safe drinking water to sustain life and health; access to safe drinking water and sanitation in detention;

and participation in water- and sanitation-related decision-making at the national and community levels.

In its general comment No. 15, the Committee on Economic, Social and Cultural Rights clarified the scope and content of the right to water by explaining what is meant by sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.

- **The water supply for each person must be sufficient and continuous to cover personal and domestic uses**, which comprise water for drinking, washing clothes, food preparation and personal and household hygiene. Other domestic water uses, such as water for swimming pools or gardening, do not fall within the scope of the right to water.

HIV/AIDS and specific water needs

Living with HIV/AIDS requires washing frequently and paying close attention to personal hygiene [...]. Wounds and lesions need cleaning, and clothes and bedding must be washed often. Fever, accompanied by sweating, is common and so many may drink more water [...]. Clean, well-aired houses are important if tuberculosis—the most common opportunistic infection—is to be avoided. All these things require extra water, yet this is something that is not always readily available.

Source: WaterAid Ethiopia and Progynist, "Making the links: Mapping the relationship between water, hygiene and sanitation and HIV/AIDS—a joint think piece" (2004). Available from www.wateraid.org.

The right to water therefore covers access to water to sustain life and health and to meet basic needs and does not entitle individuals to an unlimited amount of water. According to WHO, between 50 and 100 litres of water per person per day are needed to ensure that most basic needs are met and few health concerns arise. Access to 20-25 litres per person per day represents a minimum, but this amount raises health concerns because it is insufficient to meet basic hygiene and consumption requirements.[9] These amounts are indicative as they might depend on a particular context and might differ for some groups depending on their health status, work, climate conditions or other factors. Breastfeeding mothers, pregnant women or persons living with HIV/AIDS would need more than 50-100 litres of water per day.

At any one time, half of the world's hospital beds are occupied by patients suffering from waterborne diseases.

Source: www.un.org/waterforlifedecade.

- **Water for personal and domestic uses must be safe and acceptable.** In accordance with general comment No. 15, it must be free from microbes and parasites, chemical substances and radiological hazards that constitute a threat to a person's health. Water must also be of an acceptable colour, odour and taste to ensure that individuals will not resort to polluted alternatives that may look more attractive. These requirements apply to all sources of water provision, including piped water, tankers, vendor-provided water and protected wells.

  Drinking-water safety is usually defined through national and/or local standards for drinking-water quality. The WHO *Guidelines for Drinking-water Quality* provide a basis for the development of national standards, which, if properly implemented, will ensure the safety of drinking water.[10]

About 90 per cent of sewage and 70 per cent of industrial waste in developing countries are discharged into watercourses without treatment, often polluting the usable water supply.

Source: www.un.org/waterforlifedecade.

The absence of adequate sanitation systems in many parts of the world has led to widespread pollution of water sources that communities rely upon for survival. In its general comment No. 15, the Committee underlined that ensuring access to adequate sanitation is one of the principal mechanisms for protecting the quality of drinking-water supplies and resources.

- **Water and sanitation facilities must be physically accessible** and within safe reach for all sections of the population, taking into account the needs of particular groups, including persons with disabilities, women, children and the elderly.

Our main problems in rural communities are the following: walking long distances about 2 to 3 kilometres daily to a public tap; carrying heavy

containers on our heads 20 to 25 litres per trip; long queues at the point of taps; should there be contamination at this common point the whole village is at risk.

Source: Woman from South Africa, "Water Voice" project, 2003.

While the right to water does not imply that everyone should have access to water and sanitation at home, it requires such facilities to be in close proximity to, or at a reasonable distance from, each house. Water and sanitation should also be provided in schools and hospitals, at the workplace, in detention centres, as well as in camps for refugees and IDPs.

The average distance that women in Africa and Asia walk to collect water is 6 kilometres.

As the amount of water accessed every day is largely determined by the distance to the water source and the collection time, a reasonable distance is one that allows everyone to collect sufficient water to cover personal domestic uses. According to WHO, in order to have a basic access to 20 litres per day, the water source has to be within 1,000 metres of the home and collection time should not exceed 30 minutes. When water is piped into the home, access is optimal and at least 100 litres per person per day is likely to be ensured.[11] In this respect, UNDP confirms in its *Human Development Report 2006* that having a regular supply of clean water piped to the household is the optimal type of provision for human development. Access to a regular supply of water within the home also eliminates the need for women and children to spend time and physically exert themselves to collect water from distant sources.

- **Water services must be affordable to all.** No individual or group should be denied access to safe drinking water because they cannot afford to pay.

Lack of affordable water in Haiti

In Port-de-Paix, Haiti, respondents to a household survey reported that, when water is too expensive, they go to the highly contaminated and

garbage-filled rivers to meet their household water needs (31.1 per cent). In addition, some households forgo bathing (22.2 per cent) or cooking (26.7 per cent).

Source: Center for Human Rights and Global Justice and others, *Wòch nan Soley: The Denial of the Right to Water in Haiti*. Available from www.chrgj.org/projects/docs/wochnansoley.pdf (accessed 28 April 2010).

Accordingly, all direct and indirect costs related to water and sanitation should not prevent anyone from accessing these services and should not compromise their ability to enjoy other human rights, such as the rights to food, education, adequate housing or health. The affordability requirement also underlines that cost recovery should not become a barrier to access to safe drinking water and sanitation, notably by the poor. For instance, UNDP suggests 3 per cent of household income as a benchmark.

The relationship between access to safe drinking water and cost recovery in international declarations

The international community has underlined that access to water for personal and domestic uses should not be threatened by cost recovery. The Plan of Implementation of the 2002 World Summit on Sustainable Development underlines that cost-recovery objectives should not become a barrier to access to safe drinking water by poor people. Agenda 21 states that, beyond the provision of safe drinking water for the satisfaction of basic needs, water users should be charged appropriately.

Overall, poorer households should not be disproportionately burdened with water and sanitation expenses.

C. Common misconceptions about the right to water

• Does the right to water require water to be provided free of charge?

The right to water requires water services to be affordable for all and nobody to be deprived of access because of an inability to pay. As such, the human rights framework does not provide for a right to free water. However, in certain circumstances, access to safe drinking water and sanitation might have to be provided free of charge if the person or

household is unable to pay for it. It is a State's core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right, which includes access to a minimum essential quantity of water.

General comment No. 15 highlights that, in order to ensure that water is affordable, States should adopt the necessary measures that may notably include appropriate pricing policies such as free or low-cost water.

- **Does the right to water extend to water for agriculture or pastoralism? What does it mean in relation to water for the environment?**

Water is essential for life, but is also key to food security, income generation and environmental protection. The right to water covers only personal and domestic uses, i.e., water for drinking, washing clothes, food preparation and personal and household hygiene. It does not cover water for agriculture or pastoralism or to sustain ecological systems. Access to water for agriculture—notably for smallholders—comes under the right to adequate food, provided for in article 11 of the Covenant. However, general comment No. 15 states that priority should be given to "the water resources required to prevent starvation and disease, as well as the water required to meet the core obligations of each of the Covenant rights." Bearing in mind the interdependence and indivisibility of all human rights, it can be said that the right to water ensures priority for water use in agriculture and pastoralism when necessary to prevent starvation.

However, the right to water does have implications for water management, as it requires giving priority in water allocation to personal and domestic uses for all. These uses represent a tiny fraction of the total use of water, usually less than 5 per cent, while irrigation remains the largest user of water, currently accounting for more than 80 per cent of use in developing countries, according to UNDP.

D. The link between the right to water and other human rights

Access to safe drinking water is a fundamental precondition for the enjoyment of several human rights, including the rights to education, housing, health, life, work and protection against cruel, inhuman or degrading treatment or punishment. It is also a crucial element to ensure gender equality and to eradicate discrimination.

For example, with regard to the right to education, where no toilet block is set aside for girls in educational institutions, parents will often not allow their daughters to attend school, especially once they have started menstruating.[12]

Lack of access to safe drinking water and sanitation also has serious repercussions for the right to health. Every year, some 1.8 million children die of diarrhoea and other diseases caused by unclean water and poor sanitation, a number that dwarfs the causalities associated with violent conflict, according to UNDP. Collecting water from distant water points also has severe health implications, notably for women and children. Besides the heavy burden of carrying water, women and children are also exposed to water contact diseases such as schistomiasis. The fact that women and children do the bulk of the water collecting also affects their education and other productive activities (see also chap. II below).

> *We cannot get drinking water from urban water supply. We have to carry it from the fountain. I have hernia now because of carrying water.*
>
> *Source*: Woman from Turkey, "Water Voice" project, 2003.

If water and sanitation are not provided within the home, privacy and physical security are also an issue. If there are no adequate sanitation facilities within the home, women and children often have to go to shared latrines or open spaces to defecate. There they lack privacy and security, and are therefore vulnerable to harassment, attacks, violence or rape.

Access to safe drinking water and sanitation is also crucial for those who are deprived of their liberty. Such access is required to ensure that detainees are treated with humanity and with respect for their inherent dignity.

At the same time, the right to water can be affected by the extent to which other human rights are guaranteed. Access to safe drinking water and sanitation is most at risk for those denied the rights to adequate housing, education, work or social security. Lack of secure tenure, a fundamental element of the right to adequate housing, is often the reason why authorities deny slum-dwellers access to safe drinking water and sanitation. Cutting off water supplies has also been used by landlords or the authorities to force people out of their dwellings. Improvements in access to safe drinking water and sanitation are also dependent upon claims made by those affected. If the rights to freedom of expression,

assembly or association are not respected, the opportunities for individuals and communities to advocate an improvement in their living conditions are significantly reduced.

E. How does the principle of non-discrimination apply to the right to water?

> There is more than enough water in the world for domestic purposes, for agriculture and for industry. The problem is that some people—notably the poor—are systematically excluded from access by their poverty, by their limited legal rights or by public policies that limit access to the infrastructures that provide water for life and for livelihoods.
>
> Source: UNDP, *Human Development Report 2006*.

Discrimination means any distinction, exclusion or restriction made on the basis of specific characteristics of an individual such as race, religion, age, or sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms. It is linked to the marginalization of specific population groups and is generally at the root of structural inequalities within societies. The International Covenant on Economic, Social and Cultural Rights, in its article 2 (2), identifies the following non-exhaustive grounds of non-discrimination: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. According to the Committee on Economic, Social and Cultural Rights, "other status" includes disability, sexual orientation and gender identity, health status, and poverty and economic marginalization.[13]

Non-discrimination and equality are fundamental human rights principles and critical components of the right to water. Discrimination in relation to access to safe drinking water and sanitation can be rooted in discriminatory laws, policies or measures; exclusionary policy development; discriminatory water-management policies; denial of tenure security; limited participation in decision-making; or lack of protection against discriminatory practices by private actors.

The impact of discrimination is compounded when an individual suffers double or multiple discrimination, such as discrimination on the basis of sex *and* race or national origin or disability. The Committee has stressed the importance of addressing this intersectional discrimination in its general comment No. 16 on the equal right of men and women to the enjoyment

of all economic, social and cultural rights. For example, when water is physically difficult to access for communities experiencing poverty and economic marginalization, women usually carry the burden of procuring water for their families, exposing themselves to additional risks to their personal security.

States have an obligation to prohibit and eliminate discrimination on all grounds, and ensure equality, in law and in practice, in relation to access to safe drinking water and sanitation.

F. What is a rights-based approach to the provision of safe drinking water?

Approaching the provis.on of safe drinking water and sanitation from a human rights perspective can act as a fillip to mobilize individuals, in particular the poor and marginalized, inform them of their legal rights and empower them to realize these. A human rights approach brings a new paradigm to the water sector: the provision of safe drinking water is no longer perceived as charity, but as a legal entitlement, with individuals at the centre.

While a human rights framework does not automatically resolve difficult policy issues about financing, delivery or regulation, it does provide international standards to guide political and economic decisions over the allocation of water resources; enables individuals to be heard in decision-making related to water and sanitation; and can strengthen States' accountability for the delivery of water and sanitation services.

What is a rights-based approach to development?

A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed towards promoting and protecting human rights.

A rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and process of development.

The norms and principles are those contained in the wealth of international treaties and declarations. The principles include equality and equity, accountability, empowerment and participation. A rights-based approach to development includes:

- Express linkage to rights;

- Accountability;
- Empowerment;
- Participation;
- Non-discrimination and attention to vulnerable groups.

A human rights approach to the provision of safe drinking water and sanitation provides principles for addressing the current water and sanitation crisis. Even though the right to water applies strictly to personal and domestic uses of water, a human rights-based approach could and should be used when considering larger issues, such as water resource management. Such an approach notably requires that no population group should be excluded and that priority in allocating limited public resources should be given to those who do not have access or who face discrimination in accessing safe drinking water. A human rights approach also informs water management by clearly prioritizing, in the allocation of water among competing uses, personal and domestic uses as defined in general comment No. 15.

Looking at water and sanitation from a human rights perspective shows that individuals and communities should have access to information and participate in decision-making. Poor people and members of marginalized groups are frequently excluded from decision-making regarding water and sanitation, and hence their needs are seldom prioritized. Community participation in the planning and design of water and sanitation programmes is also essential to ensure that water and sanitation services are relevant and appropriate, and thus ultimately sustainable.

Access to information in South African law

South Africa's Water Services Act (1997) requires water services authorities to take reasonable steps to bring their draft water services development plans to the notice of their consumers, potential consumers and water services institutions within their areas of jurisdiction and to invite public comments to be submitted within a reasonable time. Authorities must also consider all comments received before adopting their development plans and, on request, report on the extent to which a specific comment has been taken into account or, if a comment was not taken into account, provide reasons therefor.

However, community participation may sometimes obscure the voice of vulnerable members of the community, such as women or persons with

disabilities. Care should therefore be taken to ensure that everyone in the community is empowered and given the space to have their say in the decision-making concerning water and sanitation.

> *The women do not have a role in the management of the water, like they are not included in the decision-making at all stages of life.*
>
> *Source*: Woman from Turkey, "Water Voice" project, 2003.

A central feature of a human rights-based approach is also its focus on accountability, which underlines the obligations of the State, as duty-bearer, to ensure access to safe drinking water and sanitation to rights-holders. In practice, accountability requires the development of laws, policies, institutions, administrative procedures and mechanisms of redress to promote and protect access to safe drinking water and sanitation.

II. HOW DOES THE RIGHT TO WATER APPLY TO SPECIFIC GROUPS?

Some groups or individuals have a particularly hard time exercising their right to water as a result of discrimination or stigma, or a combination of these factors. To protect the right to water effectively, it is necessary to pay attention to the specific situation of individuals and groups, in particular those living in vulnerable situations. States should adopt positive measures to ensure that specific individuals and groups are not discriminated against in purpose or effect. For instance, they should tailor their water and sanitation policies to those most in need of assistance rather than merely targeting majority groups. States may also need to allocate financial and human resources to groups which have historically been discriminated against to ensure that they can enjoy their rights on an equal basis with other groups in society.

Discussion on the particular groups outlined below is intended to help illustrate some of the implications of the right to water.

A. The urban and rural poor

> *I stay in a slum in Pune city. The slum has about 200 huts, in which about a thousand people live. By the side of our slum there is an open canal which takes water to the water treatment plant supplying water to the city. There is some open land on either side of the canal. Slum-dwellers go for work in*

the city area. In the morning, everyone is in a hurry to go to work, but there are only four public toilets. This is a great inconvenience, especially for us women, because the men and children can [relieve themselves] anywhere outside[...]. Men go to the canal to take a bath. Women carry water from the canal in buckets and take a bath in their huts. People say that we are polluting the water going to the treatment plant. But we have no alternative. Political people come before every election and give promises. But once they get elected on our votes, they forget us till the next election.

Source: Woman from India, "Water Voice" project, 2003.

The majority of those who do not have access to safe drinking water and sanitation are the poor, in both urban and rural areas. Not only are the poor less likely to have safe drinking water and sanitation, they are also less able to manage the impact of this deprivation.

The rural poor represent the bulk of those who do not have safe drinking water and sanitation. Over a billion rural inhabitants have to defecate in the open, with important consequences for their health, privacy and even physical security.

The poor often have less access and pay more for water

In many countries, while the poorest get less water of a lower quality, they are also often charged the most. People living in the slums of Jakarta, Manila and Nairobi pay 5 to 10 times more for water than those living in high-income areas in those same cities and more than consumers in London or New York. In Accra, many of the 800,000 people living at or below the poverty line pay 10 times more for their water than residents in high-income areas.

Source: UNDP, *Human Development Report 2006*.

The urban poor living in slums –representing 42 per cent of the urban population in developing countries—also face particular challenges in this connection. The authorities, national or local, are often reluctant to connect slums to the water and sanitation networks because they are informal settlements. Suppliers of services also give a number of reasons for not providing such areas, including that slum-dwellers cannot pay and ensure cost recovery, that they do not have the documents to prove that they are entitled to services or that they are at risk of eviction. As a result, slum-dwellers have to collect water from unprotected sources

such as polluted wells and contaminated drainage channels, or buy it from vendors at a higher cost than people who are connected to the piped water system. When slum-dwellers do have safe drinking water, its provision is often reduced during shortages to maintain flows to high-income areas.

> *The environment is not clean at all. Sanitation is poor and everything is poor. This affects our drinking water. There is no water in this area. Our expenditure has gone high as a result since we spend a lot of money to those cheats who run the tanker service. Some people manage to survive through the hardships. The poor ones almost always fall sick since they drink anything they come across. I wish to have a clean and neat environment that will not pollute our water and also a regular flow of water to save us from falling sick all the time.*
>
> Source: Man from Ghana, "Water Voice" project, 2003.

B. Women

> **The Convention on the Elimination of All Forms of Discrimination against Women**
>
> **Article 14 (2)**
>
> States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
>
> (*h*) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Lack of access to safe drinking water and sanitation affects women in particular. Women and children do most of the water collecting if drinking water is not available on the premises. Collecting and carrying water takes time and is a heavy burden on them. According to UNDP, it also helps to explain the very large gender gaps in school attendance in many countries. It is not rare for women to spend up to four hours a day walking, queuing and carrying water, time that could be put to productive activities or housework and childcare. The water collected is often dirty and from unprotected sources. Women's health can be particularly affected by the heavy burden of carrying water, as well as by water contact diseases such as schistosomiasis (see also chap. I above).

Access to adequate sanitation and violence against women

During his mission to Kenya, the former Special Rapporteur on adequate housing, Miloon Kothari, received testimonies from slum-dwellers in Kibera, Nairobi's largest slum, about the so-called flying toilets. Kibera is not connected to the city sewage system. Some latrines have been installed in the area, but they are far from sufficient for a population of over half a million. It has become common to use plastic bags to defecate. These are then thrown—thus "flying"—from shacks and shelters onto paths, or into rivers and garbage dumps. Whereas the absence of a sufficient number of latrines was the main reason given for the existence of "flying toilets", other testimonies, particularly from women, indicated that the lack of security during the evening and at night was an additional reason for not using the latrines.

Source: E/CN.4/2005/48/Add.2.

Very often, women are excluded from decision-making concerning water and sanitation. As a result, their specific needs and circumstances are not taken into account in the development of water and sanitation programmes or in the extension of these services.

C. Children

Children's health, educational advancement and overall well-being are greatly influenced by their access to basic services, including safe drinking water and sanitation.

The Convention on the Rights of the Child

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health [...].

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(c) To combat disease and malnutrition [...] through, inter alia, [...] the provision of adequate nutritious food and clean drinking water [...];

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents [...].

Safe drinking water and sanitation are fundamental for children's health. In countries with high child mortality, diarrhoea accounts for more deaths in children under five than any other cause—more than pneumonia, malaria and HIV/AIDS combined. Over 90 per cent of child mortality cases are related to contaminated water and inadequate sanitation.[14]

Lack of safe drinking water makes children more vulnerable to disease. Their immune systems and detoxification mechanisms are not fully developed, so they are often less able to respond to a water-related infection. Children also have less body mass than adults. This means that waterborne chemicals may be dangerous for a child at a concentration that is relatively harmless for an adult.

Girls' right to education also suffers. A major reason why parents do not send their daughters to school in many countries is that there are no separate sanitation facilities for girls. In Nigeria, for instance, parents withdrew their daughters from school because they had to defecate in the open. In Uganda, 94 per cent of girls reported problems at school during menstruation and 61 per cent reported staying away from school during that time.[15]

Access to safe drinking water and the right to education

Nearly 20 per cent of the respondents to a household survey in Port-de-Paix reported that having to collect water prevented or inhibited their children from attending school. Nearly three quarters also stated that safe drinking water was not available in schools and that many children had to carry water to school or purchase it there.

Source: Center for Human Rights and Global Justice and others, *Wòch nan Soley*.

D. Persons with disabilities

The accessibility of water and sanitation is also a key issue for persons with disabilities, who have historically suffered from marginalization and discrimination as a result of the inaccessible design of buildings, services and infrastructure, among other things. Yet access to water and sanitation is crucial to ensure their living independently and respect for their dignity. Frequently, minor design changes and low-cost adjustments are sufficient to render water and sanitation facilities and services accessible. Universal design should also be considered as a priority for newly built housing, services and facilities.[16]

General comment N° 15 of the Committee on Economic, Social and Cultural Rights makes clear that physical accessibility is an important dimension of accessibility, as an inherent component of the right to water.

In turn, the Convention on the Rights of Persons with Disabilities makes an explicit reference to access to water by persons with disabilities, in connection with the right to an adequate standard of living and to social protection.

The Convention on the Rights of Persons with Disabilities

Article 28 (2)

States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs; [...].

The Convention also requires States to consult and involve persons with disabilities, through their representative organizations, in the development, implementation and monitoring of legislation and policies to implement the obligations set forth in the Convention, and in other decision-making that affects them. Proper consultation is a key mechanism to prevent new inaccessible facilities and services, and to guarantee that adequate technical solutions are found to ensure accessibility.

E. Refugees and internally displaced persons

Guiding Principles on Internal Displacement (1998)

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water; [...]

(*d*) Essential medical services and sanitation.

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Source: E/CN.4/1998/53/Add.2.

Each year more than 30 million people flee their homes as a result of conflict or natural disasters and more than 200 million people are affected by natural hazards.[17]

In an emergency, displaced persons face particular challenges to access safe drinking water and sanitation, which can have life-threatening consequences.[18] Displaced persons are also particularly vulnerable to discrimination, racism and xenophobia, which can further interfere with their ability to secure safe drinking water and sanitation.

Refugee and IDP camps around the world, particularly when displacement is protracted, are often characterized by dilapidated and overcrowded conditions, in which there is inadequate provision of basic services such as safe drinking water and sanitation. Poor sanitation and lack of access to safe drinking water in these camps often lead to the spread of waterborne diseases, including cholera.

When women and children have to fetch water at some distance from the camps, they are at risk of harassment, threats and sexual violence. Women and children might also be asked to provide sexual favours in exchange for safe drinking water. Even when sanitation facilities are available in camps, these often do not take into account the specific needs of women, children, old persons or persons with disabilities. In many countries, IDPs and refugees living in camps have less water than the general population, with many of them surviving on two to three litres a day.

Refugees, asylum-seekers and IDPs in urban areas fare little better. Often unable in practice or because of their legal status to live in adequate accommodation, many do not have safe drinking water or sanitation either.

F. Indigenous peoples

Water plays an important role in indigenous peoples' day-to-day existence, as it is a central part of their traditions, culture and institutions. It is also a key element of their livelihood strategies. The right to water addresses only a small dimension of this relationship, namely access to safe drinking water for personal and domestic uses.

Access to safe drinking water by indigenous peoples is closely linked to their control over their ancestral lands, territories and resources. Lack of legal recognition or protection of these ancestral lands, territories or resources can, therefore, have far-reaching implications for their enjoyment of the right to water.

Natural water sources traditionally used by indigenous peoples, such as lakes or rivers, may no longer be accessible because of land expropriation or encroachment. Access might also be threatened by unlawful pollution or over-extraction. Furthermore, indigenous peoples' water sources might be diverted to provide safe drinking water to urban areas. Consequently, securing indigenous peoples' right to water might often require action to secure their rights to their ancestral lands, customary arrangements for managing water, as well as the protection of their natural resources.

While the majority of indigenous peoples still live in rural areas, rising numbers are voluntarily or involuntarily migrating to urban areas, where they often end up living in inadequate housing conditions characterized by a lack of access to safe drinking water and sanitation.

Indigenous peoples are often excluded from decision-making related to water and sanitation, which can act as an additional barrier undermining their access to safe drinking water and sanitation.

The **United Nations Declaration on the Rights of Indigenous Peoples** (2007) sets out the minimum international standards for the protection and promotion of the rights of indigenous peoples necessary for their survival, well-being and dignity. The following articles are of particular relevance to ensuring their right to water:

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. [...]

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

III. WHAT ARE THE OBLIGATIONS ON STATES AND THE RESPONSIBILITIES OF OTHERS?

States have the primary obligation to protect and promote human rights. Human rights obligations are generally defined and guaranteed by international human rights treaties, creating binding obligations on the States that have ratified them.

A. General obligations

In general comment No. 15, the Committee on Economic, Social and Cultural Rights stressed that, under the Covenant, States have the obligation to achieve progressively the full realization of the right to water. In other words, the Covenant acknowledges that States have resource constraints and that it may take time to ensure the right to water to everyone. Some components of the right to water are, therefore, deemed *subject to progressive realization*. However, obligations such as non-discrimination are of *immediate effect* and *not* subject to progressive realization.

The International Covenant on Economic, Social and Cultural Rights

Article 2 (1)

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a

view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

While not all aspects of the right to water can or may be realized immediately, general comment No. 15 stresses that States must, at a minimum, show that they are making every possible effort, within available resources, to better protect and promote this right. Available resources refer to those existing within a State as well as those available from the international community through international cooperation and assistance, as outlined in articles 2 (1), 11 and 23 of the Covenant.

The International Covenant on Economic, Social and Cultural Rights

Article 2 (2)

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

General comment No. 15 also underlines that there is an immediate obligation to *take steps*, which should be concrete, deliberate and targeted, to fulfil the right to water. In addition, any retrogressive measures would require the State to demonstrate that it carefully weighed all the options, considered the overall impact on all human rights and fully used all its available resources. As the most feasible means for implementing the right to water will vary from State to State, general comment No. 15 does not offer set prescriptions. The Covenant simply states that the full realization of the rights contained in it must be achieved through "all appropriate means, including particularly the adoption of legislative measures."

The Committee has also stated in general comment No. 15 that certain measures must be taken immediately in order to guarantee the right to water, for instance ensuring that significant numbers of people are not deprived of the minimum amount of safe drinking water to prevent disease; ensuring that people's personal security is not threatened when they venture out to access water and sanitation; preventing, treating and controlling water-related diseases, in particular ensuring access to adequate sanitation; and effectively monitoring the extent to which people have access to safe drinking water and sanitation.

The role of international assistance and cooperation is reflected in other instruments as well, such as the Charter of the United Nations, the Universal Declaration of Human Rights and the Convention on the Rights of the Child. It is not a substitute for domestic obligations, but it becomes particularly relevant if a State is unable to give effect to economic, social and cultural rights, and requires support from other States to do so. International cooperation is particularly incumbent upon those States that are in a position to assist others in this regard. States should thus have an active programme of international assistance and cooperation, and provide economic and technical assistance to enable other States to meet their obligations in relation to the right to water. This is reflected in the Committee's general comments No. 3 (1990) on the nature of States parties' obligations and No. 14 (2000) on the right to the highest attainable standard of health.

B. Three types of obligations

State obligations fall into three categories, namely the obligations to *respect*, *protect* and *fulfil*.

The obligation to respect

The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to water.

For example, States should refrain from: polluting water resources; arbitrarily and illegally disconnecting water and sanitation services; reducing the provision of safe drinking water to slums in order to meet the demand of wealthier areas; destroying water services and infrastructure as a punitive measure during an armed conflict; or depleting water resources that indigenous peoples rely upon for drinking.

The obligation to protect

The obligation to protect requires States to prevent third parties from interfering with the right to water.

States should adopt legislation or other measures to ensure that private actors—e.g., industry, water providers or individuals—comply with human rights standards related to the right to water. States should, for instance, adopt the necessary legislative and other measures to ensure that third parties do not arbitrarily and illegally disconnect water and sanitation services; communities are protected against third parties' unsustainable

extraction of the water resources they rely upon for drinking; the physical security of women and children is not at risk when they go to collect water or use sanitation facilities outside the home; landownership laws and practices do not prevent individuals and communities from accessing safe drinking water; the third parties controlling or operating water services do not compromise the equal, affordable and physical access to sufficient safe drinking water.

The obligation to fulfil

The obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to water.

States must, among other things, adopt a national policy on water that: gives priority in water management to essential personal and domestic uses; defines the objectives for the extension of water services, with a focus on disadvantaged and marginalized groups; identifies the resources available to meet these goals; specifies the most cost-effective way of using them; outlines the responsibilities and time frame for implementing the necessary measures; monitors results and outcomes, including ensuring adequate remedies for violations.

Under the obligation to fulfil, States must also, progressively and to the extent allowed by their available resources, extend water and sanitation services to vulnerable and marginalized groups; make water and sanitation services more affordable; ensure that there is appropriate education about the proper use of water and sanitation, protection of water sources and methods to minimize waste.

C. The responsibilities of others

The obligation on States to protect human rights includes ensuring that non-State actors do not infringe upon the right to water. This is the obligation to protect described above. In addition, there is an increasing debate about the extent to which other actors in society—individuals, intergovernmental and non-governmental organizations (NGOs), and business—have responsibilities with regard to the promotion and protection of human rights.

This section explores the role of United Nations agencies and of the private sector.

United Nations agencies

According to the Charter of the United Nations, one of the purposes of the United Nations is to promote respect for human rights. International human rights treaties also envisage a particular role for United Nations agencies in their implementation. In general comment No. 2 (1990) on international technical assistance measures, the Committee on Economic, Social and Cultural Rights also underlined that all United Nations organs and agencies involved in any aspect of international development cooperation should ensure that the rights contained in the Covenant are fully taken into account at each phase of a development project.

In recent years, reforms of the United Nations by the Secretary-General (in 1997, 2002 and 2005) have highlighted the role and responsibilities of United Nations agencies and international financial institutions with respect to human rights. In 2003, United Nations agencies, in a common understanding, affirmed that all development programmes and assistance should realize human rights and be guided by human rights principles and standards.

United Nations agencies working on water and sanitation, such as the United Nations Human Settlements Programme (UN-Habitat),[19] UNDP, the United Nations Children's Fund (UNICEF) and WHO, are increasingly referring to the human rights framework to address the current water and sanitation crisis. In 2003, the High-level Committee on Programmes established UN-Water as the inter-agency mechanism to promote coherence in, and coordination of, the United Nations system's actions to implement the water and sanitation agenda defined by the Millennium Declaration and the World Summit on Sustainable Development.

Millennium Development Goals related to water and sanitation

In September 2000, world leaders made wide-ranging commitments in the Millennium Declaration. The topics included peace, security, human rights and the environment, and a number of time-bound development targets were set. Those targets were later configured into eight Millennium Development Goals (MDGs). Goal 7 is to halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.

While the content of the MDGs partly resembles some aspects of human rights, a systematic human rights-based approach to understanding and achieving the MDGs remains an unmet challenge. Human rights have not yet played a significant role in supporting and influencing MDG-related activities. In addition, human rights standards require States to ensure that

all persons have access without discrimination to safe drinking water and sanitation.

Even if the MDG targets were to be achieved in full, it is important to note that there would still be more than 800 million people without safe drinking water and 1.8 billion people without basic sanitation in 2015.

The United Nations Millennium Project's Task Force on Water and Sanitation has affirmed that access to safe drinking water is a human right and highlighted its importance for achieving the majority of MDGs.

For more information, see *Claiming the Millennium Development Goals: A human rights approach* (United Nations publication, Sales No. E.08.XIV.6) and Millennium Project, *Health, dignity, and development: what will it take?* (London, Earthscan, 2005), pp. 15–27.

The private sector

Businesses and the private sector are important players, too. The private sector, in particular water service providers (from large companies operating piped water networks and sewage systems to individuals running water tankers), is directly involved in the provision of water.

The private sector, notably large-scale agricultural producers and industry, is also an important user of water. Irrigation remains the largest user of water but projections indicate that industry will account for most of the increase in water use to 2025. In such a context, there are risks that the interests of the poor might be pushed aside by large agricultural producers and industry, two constituencies with a strong political voice.[20]

The CEO Water Mandate

In July 2007, the United Nations Secretary-General, in partnership with international business leaders, launched the CEO Water Mandate under the auspices of the United Nations Global Compact. This initiative came about because of the understanding that the private sector, through the production of goods and services, has an impact on water resources. Endorsing chief executive officers (CEOs) acknowledge that in order to operate in a sustainable manner, and contribute to the vision of the Global Compact and the realization of the Millennium Development Goals, they have a responsibility to make water-resources management a priority, and to work with Governments, United Nations agencies, NGOs and other stakeholders to address this challenge.

For more information about the CEO Water Mandate, see www.unglobalcompact.org.

While business can contribute positively to the enjoyment of human rights, the opposite is also true, for instance through pollution, over-extraction or encroachment upon water resources that communities rely upon for drinking. Where water services are operated by the private sector, concerns have been raised about arbitrary and illegal disconnections, the affordability of water and sanitation services, as well as about the extension of these services to vulnerable and marginalized groups.

The private sector can also have an impact on the enjoyment of the right to water at the workplace. ILO Convention No. 161 concerning Occupational Health Services (1985) underlines the responsibility of employers for the health and safety of their workers, which includes access to safe drinking water and sanitation. Several voluntary, collective initiatives endorsed by companies also recognize that it is their responsibility to provide safe drinking water and sanitation at the workplace.[21]

If housing is provided by the employer, ILO Recommendation No. 115 concerning Workers' Housing underlines that the employer should ensure access to adequate sanitation facilities, as well as to safe drinking water in such ample quantities as to provide for all personal and household uses.

While States retain the primary responsibility for ensuring that private actors respect human rights, according to the Special Representative of the United Nations Secretary-General on business and human rights, business enterprises have a responsibility to respect all human rights, including the right to water (A/HRC/8/5). This responsibility is the basic expectation society has of business and it is recognized in a broad range of soft law instruments. It is also invoked by global business organizations and individual companies worldwide.

While corporations do not have direct obligations under international human rights law in relation to the right to water, they will often have duties under national water use and access laws which have been implemented to reflect Governments' international obligations. Irrespective of any legal requirements in their countries of operation, corporations face increasing societal expectations that their actions and operations should respect human rights and do no harm to the enjoyment of these rights by individuals. These expectations manifest themselves through the growing trend of adopting corporate social responsibility as part of responsible business and social performance, including in some cases at the instigation of investors and shareholders.

Many corporations have also made voluntary commitments to respect and support human rights, including the right to water, notably by signing

up to the United Nations Global Compact,[22] which defines 10 principles related to human rights, labour standards, environment and anti-corruption that signatory companies pledge to respect. Some companies have also developed their own human rights policies, programmes and tools to incorporate human rights, including the right to water, into their business operations.

Veolia Water is a private operator which provides water to 110 million people in 59 countries. It recognizes that the right to water is a basic human right and has made corporate commitments in this respect. For instance, it will:

- Not respond to calls for tenders if it deems the specifications incompatible with the population's interest and ability to pay;
- Foster the greater involvement of populations in water management, and promote dialogue with consumers and their representatives.

Source: Contribution from Veolia Water to the OHCHR consultation on human rights and access to safe drinking water and sanitation, 13 April 2007. Available from www.ohchr.org.

D. Obligations and responsibilities in specific situations

• What are the obligations of the local authorities?

Local authorities are often responsible for the supply of safe drinking water and sanitation. As decentralization—the transfer of powers and responsibilities from the central State to intermediate and local levels of government—is taking place in some 80 per cent of all developing countries and in countries in transition, local governments are playing an increasing role in the realization of the right to water. Human rights obligations arising from the right to water apply to local authorities because they are part of government or because the national Government has delegated power to them. In both cases, the primary obligation for promoting and protecting the right to water rests with the national Government, which is responsible for monitoring local authorities' performance and enabling them to perform their duties by providing them with adequate powers and resources.[23]

In its general comment No. 15, the Committee underlined that, where the provision of water has been delegated to regional or local authorities, the State should ensure that these authorities do not discriminate and have sufficient resources to maintain and extend the supply and quality of their water services.

Argentine court orders State to stop pollution and improve access to water services

Water pollution and the lack of access to safe drinking water, and the links between the two, in poor neighbourhoods of the city of Córdoba was at the centre of the *Marchisio José Bautista y Otros* case. As they had no connection to public water distribution networks, these neighbourhoods relied on groundwater wells that were heavily polluted with faecal substances and other contaminants. Furthermore, nearby a water treatment plant had been built upstream on the river, but because of its insufficient capacity, the plant spilt untreated sewage into the river daily. In its ruling, the District Court ordered the municipal authorities to take urgent measures to address the situation and minimize the environmental impact of the plant until a permanent solution for its operation was found. It also ordered them to provide 200 litres of safe drinking water per household per day until full access to the public water services could be ensured.

- **What steps need to be taken in respect of policy formulation?**

The principles of participation and inclusion are extremely relevant for ensuring that all stakeholders participate in policy formulation. Participatory policy formulation can be achieved by providing information. To respond to local water and sanitation needs, States are required to focus on extending access to populations and areas that remain underserved or unserved through, for instance, legislation, policies and strategies. According to the Sub-Commission's guidelines for the realization of the right to drinking water and sanitation, "States should at all levels of government... give priority in water and sanitation policies and programmes to the persons without any basic access".

In Kenya, UN-Habitat and COHRE facilitated community meetings with and made recommendations based on human rights standards to the Nairobi City Water and Sewerage Company (owned by the City Council). As a result, the company adopted a policy to extend water supply to informal settlements.

Source: Submission to the United Nations Committee on Economic, Social and Economic Rights by COHRE and Hakijamii Trust (November 2007).

General comment No. 15 states that "existing legislation, strategies and policies should be reviewed to ensure that they are compatible with obligations arising from the right to water, and should be repealed, amended or changed if inconsistent with Covenant requirements."

This can include action to formulate new and responsive policies that are consistent with the right to water or to amend or review existing legislation. The development of national policies, strategies and programmes is best achieved through coordination with and the participation of all relevant stakeholders, including the general public and civil society organizations, particularly those representing communities with vulnerable and marginalized members.

It is also important to recall that physical accessibility concerns not only present generations, but also future ones. Ensuring such accessibility for future generations depends on the sustainable use of water. Therefore, water should be distributed equitably, giving priority to water for human consumption.

- **Is it permissible to disconnect water services?**

Disconnection can be defined as the interruption of the delivery of water services. Disconnections from water services can happen for a variety of reasons, including non-payment, pollution of water resources or emergencies. Disconnections are also sometimes used as a way to evict households or to stop irregular connections to the water network.

While the right to water does not prohibit disconnections from water services, it puts limits and conditions on these actions. Overall, disconnections must be performed in a manner warranted by law and must be compatible with the Covenant. Those affected must be provided with effective procedural guarantees, including:

- An opportunity for genuine consultation;
- Timely and full disclosure of information on the proposed measures;
- Reasonable notice of proposed actions;
- Legal recourse and remedies;
- Legal assistance for obtaining legal remedies.

General comment No. 15 furthermore underlines that an individual shall under no circumstances be deprived of the minimum essential level of water. Accordingly, the quantity of safe drinking water a person can access may be reduced, but full disconnection may be permissible only if there is access to an alternative source which can provide a minimum quantity of safe drinking water needed to prevent disease. In this respect, there is a strong presumption that disconnections of institutions

serving vulnerable groups such as schools, hospitals and refugee or IDP camps are prohibited.

If the disconnection relates to non-payment, general comment No. 15 states that a person's capacity to pay must be taken into account before the actual disconnection takes place. Read in conjunction with the affordability criteria (see chap. I), this requirement implies that, in certain instances, when individuals are unable to pay for water, the authorities might have to provide it for free. In this respect, a number of national laws restrict disconnections of water services, in particular those that occur as a result of the user's inability, rather than unwillingness, to pay.

Judicial intervention on disconnection for non-payment in Colombia

As a result of chronic kidney failure and the related medical treatment, Ms. Jimenez de Correa was unable to work and could not afford to pay for the services provided by the Medellin Public Enterprises. The company consequently cut off her power and water supply. The District Court held that public services were inherent to the social purpose of the State and acknowledged the duty to ensure their efficient delivery to all inhabitants of the country. On appeal, the Constitutional Court confirmed the District Court's decision and ordered the immediate reconnection of electricity and water to Ms. Jimenez as a public service, referring inter alia to international standards and the general comments of the Committee on Economic, Social and Cultural Rights in its decision.

- **What are the regulatory obligations of the State when delegating the provision of safe drinking water to public or private providers?**

International human rights law does not prescribe whether water services should be delivered by public or private providers or by a combination of the two. Nevertheless, the human rights framework requires States to ensure that any form of service provision guarantees equal access to affordable, sufficient, safe and acceptable water.

Consequently, general comment No. 15 spells out that, if water services are operated or controlled by third parties, States must put in place an effective regulatory framework which includes independent monitoring, genuine public participation and penalties for non-compliance. It is implicit in this duty to regulate that the State should put this framework in place before delegating the provision of safe drinking water and sanitation.

Several national water laws provide for State regulation of water service providers

For instance, in New Zealand, the Local Government Act stipulates that a local authority considering a partnership with the private sector must develop a formal policy to address how it will assess, monitor and report on the extent to which community outcomes are furthered by the partnership. Any contracting-out of water services to the private sector may not be for more than 15 years, and the local government must retain control over pricing, the management of water services and the development of policy related to their delivery.

Source: See COHRE, *Legal Resources for the Right to Water: International and National Standards*, Sources 8 (2003), p. 56.

- **How can the right to water be protected in situations of water scarcity and water stress?**[24]

It is estimated that by 2025 about two thirds of the world's population—roughly 5.5 billion people—could be living in areas facing moderate to severe water stress. For 25 per cent of Africa's population, chronic water stress is high: 13 per cent experience drought-related water stress once in a generation and 17 per cent are without a renewable supply of water.

Source: www.un.org/waterforlifedecade/.

Water scarcity currently affects four out of every ten people in the world. The situation is worsening owing to population growth, urbanization, pollution of water resources and the impact of climate change. However, water scarcity is not inevitable; it is heavily influenced by human behaviour, social customs and institutions, and government policies. In fact, much of what passes for scarcity is a policy-induced consequence of mismanaging water resources, according to the UNDP *Human Development Report 2006*.

The right to water carries a clear obligation for States to prioritize personal and domestic uses—covering drinking, personal sanitation, washing clothes, food preparation, and personal and household hygiene—in their water management and allocation. In doing so, the authorities should ensure that those who do not have access, especially vulnerable and marginalized groups, have priority over those who already have access.

This obligation remains in situations of water scarcity and water stress, during which the State should, at a minimum, ensure everyone's equal access to sufficient and safe water to prevent disease. In this respect, it was specified at the International Conference on Freshwater (Bonn, 2001) that "water should be equitably and sustainably allocated, firstly to basic human needs and then to the functioning of ecosystems and different economic uses including food security".

Several national legislations already prioritize essential personal and domestic uses over other water uses, including in times of water stress and water scarcity.

National laws prioritizing water for essential personal and domestic uses over other uses

The Water Code in Benin provides that the first priority in the allocation of water is for human consumption, followed by water for agriculture, industry, municipal uses and leisure.

In Chad, Law 016/PR governing water underlines that priority should be given to ensuring the population's access to safe drinking water.

In France, the Government modified the water bill affirming the priority of drinking water over other water uses (Environmental Code L 211.1).

In Morocco, article 85 of Law 10-95 on water stipulates that, in the event of water scarcity, priority should notably be given to water for personal and domestic uses.

In Niger, article 9 of Law No. 98-041 governing water underlines that, during droughts, the local authorities may prohibit the use of water that is not directly related to human consumption, including water for gardening, swimming pools or washing cars.

In South Africa, section 5 of the Water Services Act underlines that "if the water services provided by a water services institution are unable to meet the requirements of all existing consumers, it must give preference to the provision of basic water supply and basic sanitation to them."

- **How can the right to water be protected during emergencies?**

In its general comment No. 15, the Committee noted that, during armed conflicts, emergencies and natural disasters, the obligations of States encompass the right to water and the provisions of international humanitarian law relating to water. This includes protecting objects indispensable for the survival of the civilian population, including

drinking-water installations and supplies, and ensuring that civilians, internees, prisoners and returnees have access to adequate water. It should also be recalled that the Covenant contains no derogation clause, which means that States are not allowed to suspend their obligations in a public emergency.

The Guiding Principles on Internal Displacement also stipulate that the competent authorities shall provide drinking water and sanitation to all IDPs, regardless of the circumstances and without discrimination (see also chap. II).

The Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters can help humanitarian actors implement a rights-based approach in the context of natural disasters, including in relation to the provision of safe drinking water and sanitation.

In emergencies—such as natural disasters, conflicts or post-conflict situations—a basic provision of 7.5 to 15 litres minimum per person per day has been suggested, as there may not be enough water to cover all personal and domestic uses.[75]

IV. MONITORING THE RIGHT TO WATER AND HOLDING STATES ACCOUNTABLE

Mechanisms of accountability are crucial for ensuring that States respect their obligations in relation to the right to water. Monitoring takes place at national, regional and international levels, and involves a variety of actors, such as the State itself, civil society, national human rights institutions (NHRIs) and international human rights mechanisms.

A. National accountability and monitoring

Accountability compels a State to explain what it is doing and why, and how it is moving towards the realization of the right to water for all, as expeditiously and effectively as possible. International human rights law does not prescribe an exact formula for domestic mechanisms of redress and accountability. At a minimum, all accountability mechanisms must be accessible, impartial, transparent and effective.

Administrative, policy and political mechanisms

Administrative and political mechanisms are complementary or parallel means to judicial mechanisms of accountability. For instance, the

development of a national water and sanitation policy or strategy, linked to workplans and participatory budgets, plays an important role in ensuring Government accountability. Human rights-based indicators support the effective monitoring of key water and sanitation outcomes and some of the processes to achieve them. Furthermore, assessments of various kinds, such as human rights impact assessments, offer a way for policymakers to anticipate the likely impact of a projected policy and later to review its actual impact on the enjoyment of the right to water.

Several national water laws also provide for administrative remedies that allow water users to lodge complaints. For instance, the Australian Utilities Act provides for a consumer council that would protect users' rights and seek to ensure that utility services continue to be provided to persons suffering financial hardship. In this respect, the Consumer Council may direct a water utility not to withdraw services or instruct it to reconnect services within 24 hours. Finland's Water Service Act grants jurisdiction to a consumer ombudsman to ensure compliance with the law and guarantee compensation to customers if damage is caused by an error in water services.[26]

Political mechanisms, such as democratic processes, and monitoring and advocacy by independent actors also contribute to accountability. Civil society organizations and others are increasingly using monitoring methods based on indicators, benchmarks, impact assessments and budgetary analysis to hold Governments accountable in relation to the right to water. Indicators, especially when disaggregated by prohibited grounds of discrimination, provide useful information on how the right to water is realized in a particular national context.

The Public Affairs Centre, an NGO in Bangalore, India, has pioneered a new approach to the regulatory oversight of public service provision. It conducted a large social audit of perceptions about the public services provided by the municipal authorities. This "citizens' report card" highlighted deficiencies in the provision of water and sanitation, and led to a process of structured consultations between the State Government, the municipal authorities and local citizens' groups and residents' associations. Gradually, the social audit began to register real improvements, with poor households reporting a sharp reduction in bribes for connections and improvements in efficiency.

Source: www.pacindia.org.

Judicial mechanisms

Judicial mechanisms are a crucial component of domestic enforcement measures, providing adequate remedies to individuals if their right to water is violated.

The incorporation in domestic laws of international instruments recognizing the right to water can significantly broaden and improve remedial measures. It enables courts to adjudicate violations by direct reference to the International Covenant on Economic, Social and Cultural Rights, the constitution or specific laws recognizing or incorporating elements of the right to water.

A number of courts have adjudicated cases related to the promotion and protection of the right to water, notably in relation to the pollution of water resources and disconnections from water services. Domestic courts have also increasingly heard cases relating to access to safe drinking water and sanitation under the protection of the rights to life, health and adequate housing or the right to a healthy environment.

For instance, in the case of *Residents of Bon Vista Mansions* v. *Southern Metropolitan Local Council*, the South African High Court found that disconnecting a water supply represented a prima facie breach of the State's constitutional duty to respect the right to water. In *Subhash Kumar* v. *State of Bihar*, the Supreme Court of India held that the right to life was a fundamental right under article 21 of the Constitution, and it included the right to enjoy pollution-free water for the full enjoyment of life.

The case of prepaid water meters in South Africa

In *Mazibuko* v. *City of Johannesburg*, the applicants challenged the legality and constitutionality of the City's policy of imposing prepayment water meters, as well as the provision of a free basic water supply of 25 litres per person per day or 6,000 litres per household per month.

The prepayment meters in Phiri, a township in Soweto, were designed to supply the free basic water supply of 25 litres per person per day or 6,000 litres per household per month. Once this allocation was reached, the meters automatically shut off the supply. For the applicants, this meant that they went without water for the last 15 days of each month.

In its judgement, the High Court ruled that the City of Johannesburg's forced prepayment water meters scheme in Phiri with automatic shut-off mechanisms was unlawful, unreasonable and unconstitutional, as it did

not give reasonable notice to enable representation to be made before any cut-off of water. The Court also noted that the introduction of prepaid water meters could inhibit the right of access to water as it did not take into account the inability to pay or the specific needs of users. The City was therefore directed to provide Phiri residents with the option of a normal metered water supply.

The judgement also held that Johannesburg's water policy was discriminatory. While people in low-income, historically black townships were required to pay for water in advance, those in wealthy, historically white suburbs were entitled to water on credit and to negotiate payment with the City.

The Court also ordered the City to provide Phiri residents with 50 litres of free water per person per day. This was an increase from the previous allocation whereby each household (on average containing 16 persons) was provided with 200 litres per day. The Court noted that 25 litres per person was insufficient, especially for people living with HIV/AIDS. The Court noted that the City had the water and the financial resources to provide 50 litres per person per day, including through funds provided by the national Government for water provision that the City had chosen thus far not to use for the benefit of the poor.

In examining the process by which the prepayment water meters had been introduced, the High Court concluded that it had been procedurally unfair, lacking consultation, adequate notice, advice on legal rights and information on available remedies.

The City of Johannesburg appealed against this judgement to the Supreme Court of Appeal. It upheld the appeal and ordered that 42 litres of water per Phiri resident per day would constitute sufficient water instead of the 50 litres ordered by the High Court.

Contradicting the findings of both the High Court and the Supreme Court of Appeal, the Constitutional Court found that the free basic water policy adopted by the City of 25 litres per person per day was reasonable with regard to the Constitution and that the use of prepaid water meters was lawful.

The Constitutional Court also recognized how social and economic rights entrenched in the Constitution contributed to the deepening of democracy by, inter alia, enabling "citizens to hold Government accountable not only through the ballot box but also, in a different way, through litigation." The Court stated that during the litigation, and perhaps because of it, the City has repeatedly reviewed and revised its policies to ensure that they did promote the progressive achievement of the right of access to sufficient water.

To ensure that judicial remedies are effective, an independent and functioning judiciary is vital. Judges and lawyers must be able to conduct their work impartially, on the basis of facts and in accordance with the law, without any improper influences, threats or interference. Members of the judiciary, lawyers and other legal professionals must be competent to perform their role and accountable for their performance.

Legal aid and access to remedies

Victims of violations of the right to water often belong to the most marginalized and discriminated groups, such as the urban and rural poor, racial or ethnic minorities, indigenous peoples, irregular migrants, internally displaced persons or women. Providing legal aid can ensure that victims have access to remedies in cases related to access to safe drinking water and sanitation. Otherwise, they might, for instance, have to choose between paying court fees and sending their children to school.

National human rights institutions (NHRIs)

NHRIs advise the Government and recommend policy or legislative changes, handle complaints, undertake investigations, ensure the ratification and implementation of international human rights treaties, and provide training and public education.[27] NHRIs sometimes have quasi-judicial functions and a mandate allowing them to contribute to the development of legislation. Most institutions are called commissions or ombudsmen.

In some countries, NHRIs are increasingly focusing their work on ensuring protection of economic, social and cultural rights. As such, they can provide another avenue for the protection of the right to water.

National human rights commissions and the right to water

The Kenya National Commission on Human Rights has a specific programme to monitor the realization of economic, social and cultural rights; promote them; address violations of these rights; and conduct research and produce reports on issues related to their enjoyment. As part of this focus, the Commission notably assessed the implementation of the right to water in Kenya in one of its annual reports. In its monitoring work, the Commission has also been looking at the promotion and protection of the right to water. In a public inquiry into alleged human rights violations by salt-manufacturing firms, the Commission found that these firms were responsible for polluting water resources that surrounding communities relied upon for human consumption.

The Peruvian NHRI (Defensoría del Pueblo) published a report on the right to water, "Ciudadanos sin Agua: Análisis de un Derecho Vulnerado" ("Citizens without water: analysis of a rights violation"), which analyses its protection in the Constitution, national laws and policies, and its implementation. It concludes that a large part of both the rural and urban population lack safe drinking water and sanitation, and formulates recommendations to the State as well as to water service providers to improve access throughout the country.

B. Regional accountability

Judicial or quasi-judicial regional human rights mechanisms, in particular the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the European Committee of Social Rights, have also addressed and developed specific jurisprudence related to the promotion and protection of the right to water.

The African Commission on Human and Peoples' Rights found that the failure of a Government to provide basic services, including safe drinking water, to its population constituted a violation of the right to health.[28] The European Committee of Social Rights has been looking at access to safe drinking water and sanitation in the context of the enjoyment of the right to adequate housing.[29]

Inter-American Court of Human Rights: lack of access to safe drinking water and sanitation as a violation of the right to life

In the case of the *Sawhoyamaxa Indigenous Community* v. *Paraguay*, the Inter-American Court considered that the living conditions of the Sawhoyamaxa indigenous peoples, and the death of several of their members as a consequence of these conditions, amounted to a violation of their right to life.

Barred from their ancestral lands, the Sawhoyamaxa indigenous community had been living by the roadside, without any basic services, such as health care, safe drinking water or sanitation. Their most reliable source of drinking water was rainwater, which was very scarce because of inadequate storing facilities. Although the authorities supplied them with two 5,000-litre fibreglass reservoirs, the water supplied was not drinkable. In the end one broken tank was never replaced while the other ended up not being used as the water had not been supplied for several months. There was no sanitation and community members had to defecate in the

open. When it rained, the stagnant water covered the floor of the huts with excrement, raising serious health concerns. In this respect, 50 per cent of the population examined suffered from parasite infection. Within this context, many members of the community, particularly children and the elderly, died from dehydration.

In its judgement, the Court also ordered the Government to immediately, regularly and permanently adopt measures to supply sufficient drinking water for consumption and personal hygiene to the members of the community and to set up latrines or other types of sanitation facilities in the settlements of the community. The Court underlined that these services should be provided until the traditional lands are effectively made over to the Sawhoyamaxa indigenous community.

C. International monitoring

United Nations treaty bodies

Implementation of the United Nations core human rights treaties is monitored by committees composed of independent experts, often referred to as *treaty bodies*, such as the Committee on Economic, Social and Cultural Rights. These committees issue both *concluding observations* on the regular reports of States parties, as well as thematic *general comments*. Several committees, including the Committee on Economic, Social and Cultural Rights, have issued concluding observations that address human rights obligations to provide access to safe drinking water and sanitation.

In its review of State party reports, the Committee on Economic, Social and Cultural Rights has looked at, and formulated specific recommendations on, the lack of access to safe drinking water and sanitation in slums, lower standards for minorities, restrictions regarding access, the situation of IDPs, water pollution, environmental problems and their impact on access to water, imbalances in water and sanitation supply between urban and rural areas, the failure of the State to ensure the supply of safe drinking water to vulnerable groups; the need for schools to provide drinking water, as well as separate, private and safe sanitation facilities for girls, and cases where large segments of the population are left without safe drinking water.

The Committee on the Elimination of Discrimination against Women has considered the effect of poisoned water on rural women and their access

to water and sanitation, among other things. The Committee against Torture and the Human Rights Committee have considered that a lack of access to safe drinking water and adequate sanitation forms part of the conditions of detention and can constitute inhuman or poor conditions of detention. The Committee on the Rights of the Child has addressed children's access to safe drinking water and sanitation, notably as part of the rights to an adequate standard of living and to health. In doing so, it stressed the need for States parties to adopt a national policy on safe drinking water and sanitation; monitor the level of access to safe drinking water and sanitation; address the pollution and contamination of water and improve access to sanitation; and give priority to vulnerable groups and those without access. It also expressed concern about children being recruited to clean sewers and latrines manually, as well as about the lack of separate toilets in schools, preventing the full participation of girls.

In addition, the Human Rights Committee, the Committee against Torture, the Committee on the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Committee on Migrant Workers, the Committee on the Rights of Persons with Disabilities have *individual complaints mechanisms*, as will the Committee on Enforced Disappearances. In December 2008, the General Assembly adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which offers an additional avenue for individuals to submit complaints related to the right to adequate housing. The Optional Protocol will enter into force once it has been ratified by 10 States.

United Nations special procedures

"Special procedures" is the general name given to the mechanisms of the Human Rights Council to address issues of concern in all parts of the world. Although their mandates vary, they usually monitor, examine and report publicly on human rights situations in either specific countries or on major human rights themes worldwide.

In its resolution 7/22, the Human Rights Council created the mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation. Catarina de Albuquerque was appointed as the first Independent Expert in 2008.

Mandate of the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation:

- Identify, promote and exchange views on best practices related to access to safe drinking water and sanitation
- Prepare a compendium of best practices
- Clarify the content of human rights obligations in relation to access to safe drinking water and sanitation
- Make recommendations that could help the realization of the Millennium Development Goals, in particular Goal 7
- Apply a gender perspective, including through the identification of gender-specific vulnerabilities

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Several other special procedures have also looked at the relevance of access to safe drinking water and sanitation to their specific mandates. In particular, the Special Rapporteurs on the rights to food, adequate housing and health have paid attention to it during their country visits and in individual reports and interaction with States on specific situations. In 2001, the Commission on Human Rights, in its resolution 2001/25, asked the Special Rapporteur on the right to food to pay attention in his reports to drinking water and its interdependence with the right to food. The Special Rapporteur on the right to health has considered safe drinking water and sanitation as determinants of the right to health, while the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has analysed these issues within the context of the availability of infrastructure and services attached to housing.[30]

NOTES

[1] See United Nations Children's Fund and World Health Organization, *Progress on Drinking Water and Sanitation: Special Focus on Sanitation* (2008). Improved drinking water sources include those that are protected from outside contamination, particularly faecal matter. However, "improved" does not necessarily mean that the water is actually safe. Improved sanitation facilities are facilities that ensure hygienic separation of excreta from human contact.

[2] United Nations Development Programme, *Human Development Report 2006: Beyond Scarcity–Power, poverty and the Global Water Crisis* (Basingstoke, United Kingdom, Palgrave Macmillan, 2006).

[3] Recommendation Rec(2001)14 of the Committee of Ministers to member States on the European Charter on Water Resources.

[4] Message from Beppu, 1st Asia-Pacific Water Summit, Beppu, Japan, 3-4 December 2007.

[5] General comments provide an authoritative interpretation by an expert body on provisions under various international covenants, including the International Covenant on Economic, Social and Cultural Rights.

[6] E/CN.4/Sub.2/2005/25. The guidelines are intended to assist Government policymakers, international agencies and members of civil society to implement the right to drinking water and sanitation.

[7] Standard Minimum Rules for the Treatment of Prisoners; United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Principles for Older Persons; Guiding Principles on Internal Displacement; ILO Recommendation No. 115 concerning Workers' Housing; Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national security of the Food and Agriculture Organization of the United Nations; United Nations Declaration on the Rights of Indigenous Peoples.

[8] See, for instance, the constitutions of Cambodia, Colombia, Eritrea, Ethiopia, Gambia, Iran (Islamic Republic of), Mexico, Nigeria, Panama, Philippines, Portugal and Zambia.

[9] G. Howard and J. Bartram, "Domestic water quantity, service level and health" (World Health Organization, 2003), p. 22.

[10] Third edition (2008) available from www.who.int.

[11] Howard and Bartram, "Domestic water quantity", pp. 22–26.

[12] UN-Water, "Sanitation contributes to dignity and social development", factsheet No. 3 (2009).

[13] See general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

[14] UNICEF, "Children and Water, Sanitation and Hygiene: The Evidence", occasional paper for the *Human Development Report 2006*.

[15] WaterAid, "'Global cause' and effect: How the aid system is undermining the Millennium Development Goals" (2007).

[16] For some interesting examples and good practices, see www.make-development-inclusive.org/toolsen/Includingwatsan.pdf (accessed 28 April 2010) and "Technical Issue Note: Access to water and sanitation for persons with disability", available from www.danidadevforum.um.dk.

[17] Global WASH Cluster, *The Human Right to Water and Sanitation in Emergency Situations: The Legal Framework and a Guide to Advocacy* (2009).

[18] See, for example, The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (2004), p. 56 and, generally, chapter 4.

[19] See, for instance, *Manual on the Right to Water and Sanitation* (2007) and *Sanitation: A Human Rights Imperative* (2008).

[20] UNDP, *Human Development Report 2006*, pp. 14–15.

[21] A/HRC/4/35/Add.4.

[22] www.unglobalcompact.org.

[23] International Council on Human Rights Policy, *Local Government and Human Rights: Doing Good Service*, 2005, pp. 11 and 20.

[24] Water stress occurs when the demand for water exceeds the available amount during a certain period or when poor quality restricts its use.

[25] See, for instance, the Sphere Project (www.sphereproject.org/).

[26] COHRE, *Legal Resources for the Right to Water*, p. 55.

[27] See General Assembly resolution 48/134 on national institutions for the protection and promotion of human rights ("Paris Principles").

[28] *Free Legal Assistance Group and others* v. *Zaire*, Communications 25/89, 47/90, 56/91 and 100/93.

[29] See, for instance, Complaint No. 27/2004, *European Roma Rights Centre* v. *Italy*.

[30] For a list of all special procedures, and information on their mandates and contact details, see www.ohchr.org.

ANNEX

Selected international instruments and other documents related to the right to water

International treaties

Charter of the United Nations (1945)

International Covenant on Economic, Social and Cultural Rights (1966) and its Optional Protocol (2008)

International Covenant on Civil and Political Rights (1966) and its first Optional Protocol (1966)

Convention on the Elimination of All Forms of Discrimination against Women (1979) and its Optional Protocol (1999)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and its Optional Protocol (2002)

ILO Convention No. 161 on Occupational Health Services (1985)

Convention on the Rights of the Child (1989)

International Convention on the Rights of Persons with Disabilities (2006) and its Optional Protocol (2006)

Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (1977)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (1977)

Regional treaties

African Charter on Human and Peoples' Rights (1981)

African Charter on the Rights and Welfare of the Child (1990)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

The African Convention on the Conservation of Nature and Natural Resources (2003)

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

European Social Charter (1961)

Revised European Social Charter (1996)

Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (1999)

American Convention on Human Rights (1969)

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

International declarations and other instruments

Universal Declaration of Human Rights (1948)

United Nations Standard Minimum Rules for the Treatment of Prisoners (1977)

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

United Nations Principles for Old Persons, General Assembly resolution 46/91 (1991)

Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2)

ILO Recommendation No. 115 concerning Workers' Housing (1961)

United Nations Declaration on the Rights of Indigenous Peoples, General Assembly resolution 61/295 (2007)

Guidance by expert human rights mechanisms

Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations

Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing

Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health

Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water

Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights

Human Rights Committee, general comment No. 6 (1982) on the right to life

Human Rights Council resolutions

Resolution 7/22 on human rights and access to safe drinking water and sanitation

International conference outcome documents

Vancouver Declaration on Human Settlements (1976)

Mar del Plata Action Plan, United Nations Water Conference (1977)

Rio Declaration on Environment and Development and Agenda 21 of the United Nations Conference on Environment and Development (1992)

Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights (1993)

Programme of Action of the International Conference on Population and Development (1994)

Habitat Agenda (1996)

United Nations Millennium Declaration, adopted by the United Nations General Assembly "Millennium Assembly of the United Nations" (2000)

Selected websites

Office of the United Nations High Commissioner for Human Rights: www.ohchr.org

(This website contains general information and resources on economic, social and cultural, rights, and the web pages of the human rights treaty bodies and special procedures, including the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.)

United Nations Human Settlements Programme: www.unhabitat.org (search for: water and sanitation)

World Health Organization: www.who.int (search for: health, sanitation and hygiene)

UN-Water: www.unwater.org

Center for Economic and Social Rights: www.cesr.org

Centre on Housing Rights and Evictions: www.cohre.org

WaterAid: www.wateraid.org

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No. 2	The International Bill of Human Rights (Rev.1)
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No. 11	Extrajudicial, Summary or Arbitrary Executions (Rev.1)
No. 12	The Committee on the Elimination of Racial Discrimination
No. 13	International Humanitarian Law and Human Rights
No. 14	Contemporary Forms of Slavery
No. 15	Civil and Political Rights: The Human Rights Committee (Rev.1)
No. 16	The Committee on Economic, Social and Cultural Rights (Rev.1)
No. 17	The Committee against Torture
No. 18	Minority Rights (Rev.1)
No. 19	National Institutions for the Promotion and Protection of Human Rights
No. 20	Human Rights and Refugees
No. 21	The Right to Adequate Housing (Rev.1)
No. 22	Discrimination against Women: The Convention and the Committee
No. 23	Harmful Traditional Practices Affecting the Health of Women and Children
No. 24	The International Convention on Migrant Workers and its Committee (Rev.1)
No. 25	Forced Evictions and Human Rights
No. 26	The Working Group on Arbitrary Detention
No. 27	Seventeen Frequently Asked Questions about United Nations Special Rapporteurs
No. 28	The Impact of Mercenary Activities on the Right of Peoples to Self-determination
No. 29	Human Rights Defenders: Protecting the Right to Defend Human Rights

No. 30	The United Nations Human Rights Treaty System - An Introduction to the Core Human Rights Treaties and the Treaty Bodies
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No. 33	Frequently Asked Questions on Economic, Social and Cultural Rights
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No. 35	The Right to Water

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